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MEMORANDUM

Date: July 28, 2014

To: Charlotte County Board of County Commissioners
Planning and Zoning Board

From: Elizabeth Nocheck, Planner II

Subject: Revisions to Chapter 3-5, Article XXI Excavations, and Article XXIII Excavation and Earthmoving, and the creation of Chapter 3-5, Article XXIII Earthmoving, of the Code of Laws and Ordinances of Charlotte County, Florida.

At the direction of the Board of County Commissioners, staff has been working to revise and improve the County's Excavation and Earthmoving Ordinance for some time. The proposed revisions to these regulations were developed after several roundtable discussions with stakeholders and members of the public. The Agricultural and Natural Resources Advisory Committee (ANRAC) also reviewed and provided comment on the proposed Earthmoving Code revisions.

The proposed revisions to the Excavation and Earthmoving Ordinance are extensive, and have been compiled into a document now called the Earthmoving Code. Many changes to the document are the result of compromises made between interested parties at the roundtables. However, there are five major proposed changes to the Earthmoving Code on which the roundtable groups were unable to reach an agreement. The issues are presented below, along with an explanation of the proposed changes, the recommendations from staff, and suggestions from the roundtable participants.

1. No Hearing Examiner

Currently, all Commercial Excavation permits are approved by a Hearing Examiner. The proposed Earthmoving Code revision would require all excavation permits to be approved by the Excavation Administrator. Staff and the roundtable participants are in favor of this recommendation.

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Comprehensive Planning Division
18400 Murdock Circle | Port Charlotte, FL 33948
Phone: 941.764.4920 | Fax: 941.743.1299

2. Requirement to Limit Hours of Operation

Hours of operation currently permit excavation activity between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between the hours of 7:00 a.m. and 12:00 p.m. on Saturdays, unless otherwise approved by the Hearing Examiner.

The proposed revision to Section 3-5-464 Operation Standards tailors the hours of operation to different types of excavation activities, as follows:

- a. In the Rural and Urban Service Areas of the Babcock DRI, an earthmoving operation located within two miles of a dwelling unit in existence at the time of permitting shall only conduct operations between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless otherwise approved by the Earthmoving Administrator. If there is no dwelling unit within two miles of the earthmoving operation, the hours of operation are not restricted.
- b. In the Urban Service Area, but not including the Urban Service Area of the Babcock DRI, an earthmoving operation shall only conduct operations between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday.
- c. For excavations for agricultural purposes, the only restrictions to hours of operations are for trucks hauling material offsite. Truck traffic hours of operation are restricted to between the hours of 7:00 a.m. and 6:00 p.m., Monday through Friday, and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday.

Staff is in support of this recommendation. At the roundtables, the original request was that Ag ponds have no limits placed on the hours of operation or the creation of a map showing a particular area where there are no limitations on operating hours. Some members of the roundtable discussions are against the idea of unlimited hours of operation. The proposed language of only limiting the truck traffic hours of operation was not discussed at the roundtable meetings.

3. Requirement to Retain All Excavated Material On-site for Agriculture Ponds

The current requirement states that if an agricultural excavation has been applied for, no amount of excavated material may be removed from a property. The proposed change to this requirement, found in Section 3-5-466 Specific Earthmoving Permits, is that excavated material may be removed offsite for agricultural excavations as long as the roadway service life reduction fee is assessed. Staff and participants at the roundtables support this recommendation.

4. Notification to the County Regarding Exempt Agriculture (Ag) Ponds

The County currently allows certain types of earthmoving operations to be exempt from notification requirements. These earthmoving operations are required to submit an exemption form and a fee of \$200. The proposed revision to the Earthmoving Code retains the three levels of agriculture-related excavations, with two levels allowing exemption.

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The following changes are summarized based on the language in proposed Section 3-5-463 Exempt Earthmoving Operations:

Mini Farm Ponds are exempt from application requirements. The size of each individual pond can be up to three acres, and up to 10% of the total acreage of the property can be excavated. Mini Farm Ponds do not require notification to the County.

Small Farm Ponds are exempt from application requirements. The size of each individual pond can be between three and 15 acres, and up to 10% of the total acreage of the property can be excavated. Small Farm Ponds require notification to the County, but are not required to pay a fee.

Agriculture (Ag) Excavations (formerly called the FARMS Excavations) are not exempt from application requirements. Each individual pond size can be 15 acres and larger, but the total cumulative acres excavated cannot exceed 10% of the total acreage of crops to be irrigated. Ag Excavations require submittal of an application, payment of applicable fees, and approval by the Earthmoving Administrator.

Staff supports this recommendation. The original request made during the roundtables was to not require any notifications to the County; however, staff is proposing that Small Farm Ponds must submit notification to the County, but remain exempt from the application requirements and related fees. It should be noted that this exact wording was not part of the roundtable discussion.

5. Commercial Excavation Permit Renewal

Currently, in order to renew a permit for a commercial excavation operation, the operator is required to apply for a new permit. Existing commercial mines cannot have their permits renewed without first achieving consistency with the Comprehensive Plan (Plan), which would require amending the property's Future Land Use Map (FLUM) designation to Mineral Resource Extraction (MRE), as well as rezoning the property to Excavation and Mining (EM).

The proposed Section 3-5-462 Nonconformities contains the following language:

An earthmoving operation that has been approved by the County, which has a valid permit on the effective date of this Article, and which is made nonconforming by this Article, may continue to operate in accordance with the regulations under which it was approved. However, any request for a non-administrative modification shall require the operation to come into compliance with this Article, the Comprehensive Plan, and the Land Development Regulations.

- (a) A request to renew a permit for a nonconforming operation may only be approved if all of the following conditions are met at the time of renewal:
 - (1) The operation is in compliance with the standards, requirements, and conditions of the permit.
 - (2) There are no changes to the operation.
 - (3) All local, State, and Federal permits are valid.
- (b) The operation shall comply with any new fees that have been adopted prior to the renewal date.

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Staff has no issue with the proposed language or with the renewal of existing commercial mines. It should be noted, however, that this change could not be enforced until the Future Land Use Element Appendix I: Land Use Guide is amended. The County intends to bring this text amendment forward in the near future, pending the approval of the Earthmoving Code. The policy which would need to be amended is found in the Special Provisions of the MRE land use section, and reads as follows:

Properties that have been approved for mining operations by the county prior to the adoption of this designation (12/15/2008) shall have a continuing right to conduct excavation operations in accordance with the approved permit, the Comprehensive Plan and the Excavation and Earthmoving section of the Charlotte County Code of Laws and Ordinances. ~~However, any person with an expiring or inactive permit shall not seek an extension or renewal unless a land use change to this designation is approved.~~

The stricken language, as shown above, would be removed from this policy, thereby allowing commercial excavation operations with an expiring or inactive permit to renew their permit without being required to amend their Future Land Use Map designation. It should be noted that a commercial excavation operation would still be required to meet all of the standards, requirements, and conditions of their permit, but would not be required to apply for a FLUM amendment and rezoning.

Members of the roundtable discussions have been unable to reach a consensus on this recommendation. The majority of those at the roundtable discussions support this recommendation, while a few disagree with the proposed changes to the Plan.

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CHAPTER 3-5 - PLANNING AND DEVELOPMENT

ARTICLE XXIII. EARTHMOVING

Article XXIII. Earthmoving

Staff Note: The sections highlighted in Yellow are those areas where there was no consensus opinion during the roundtable on January 8, 2014.

Section 3-5-457. Intent and Purpose.

It is the intent and purpose of this Article to regulate existing and future earthmoving operations in such a manner as to minimize any direct, indirect and cumulative impacts detrimental to wildlife and its habitat, public and private infrastructure, ground water and surface water, the public health, safety, and welfare, current and surrounding land uses, and property values as a result of such activities within the County.

Section 3-5-458. Applicability.

- (a) The provisions of this Article apply to any person in the unincorporated areas of the County presently conducting or proposing to dig, mine, scrape, excavate, or in any manner conduct an activity that moves or removes earth from its existing location and moves it to another location, whether on the same or another lot. Compliance with the requirements of this Article shall not relieve any party from complying with the requirements of any other applicable Federal, State, or local law.
- (b) Babcock Ranch Community Master Development of Regional Impact Master DRI Development Order is approved for a 13,630 acre community ("the DRI Boundary"). The developer has obtained state and federal permits for a series of lakes to be constructed during the development of the community within the DRI Boundary. Charlotte County shall issue permits and or permit extensions for those lakes permitted by the state or federal agencies in accordance with the state and federal permits, provided that the fill from those lakes currently permitted under EarthSource Mine Permit #07-EX-16 or an extension or modification thereof may be removed from the DRI Boundary, but those lakes not yet under a County earthmoving permit shall retain the fill material within the DRI Boundary.

Section 3-5-459. Earthmoving Operations.

All earthmoving operations are prohibited unless one of the following conditions is met.

- (a) The earthmoving operation is exempt per this Article.
- (b) A Construction Permit has been approved.
- (c) A Standard Earthmoving Permit has been approved.
- (d) A Specific Earthmoving Permit has been approved.

Section 3-5-460. Application Requirement.

A permit shall only be applied for by the owner of the lot on which the activity will occur or an entity granted permission by the owner of the lot.

Section 3-5-461. Staff Review and Action.

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County staff shall review earthmoving operations governed by this Article for consistency with the Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County, Florida.

Section 3-5-462. Nonconformities.

An earthmoving operation that has been approved by the County, which has a valid permit on the effective date of this Article and which is made nonconforming by this Article, may continue to operate in accordance with the regulations under which it was approved. Any request for a non-administrative modification shall require the operation to come into compliance with this Article, the Comprehensive Plan, and the Land Development Regulations.

(a) A request to renew a permit for a nonconforming operation may only be approved if all of the following conditions are met at the time of renewal:

(1) The operation is in compliance with the standards, requirements, and conditions of the permit.

(2) There are no changes to the operation.

(3) All local, State, and Federal permits are valid.

(b) The operation shall comply with any new fees that have been adopted prior to the renewal date.

Section 3-5-463. Exempt Earthmoving Operations.

(a) Notification to the County for earthmoving activities associated with the following operations shall not be required. This does not remove the requirement to apply for other necessary County permits, such as a right-of-way permit.

(1) Grave digging.

(2) Well construction.

(3) Maintenance dredging of canals and stormwater ponds. Publicly-funded maintenance dredging shall not occur within 15 feet of a seawall and 10 feet of a piling support structure.

(4) Plowing, tilling and other similar soil alteration when in association with the cultivation of crops for human or animal consumption, for renewable energy manufacture, or for silviculture operations.

(5) Flower gardening and landscaping when conducted on a lot containing a habitable dwelling unit as long as there are no adverse impacts on adjacent properties.

(6) Garden supply retailing or wholesaling. The stockpiling of loose soil, gravel, mulch, and other similar gardening materials that are accessory to the business.

(7) Construction of nonresidential farm buildings.

(8) Construction of public roads and associated stormwater infrastructure.

(9) Mini Farm Pond construction. This is an excavation with a footprint that is less than or equal to three acres and which will be used as a livestock watering pond, irrigation pond, or other bona fide agriculture use. The total amount of cumulative acres of excavations that may occur on

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contiguous lots is 10 percent of the total acreage of the lot or contiguous lots. The cumulative acres are inclusive of all excavations on-site but exclusive of ditches.

(b) Exemption Verification Process.

Notification to the County for earthmoving activities associated with the following operation shall be required in order to confirm the exempt status of the operation.

- (1) Small Farm Pond construction. This is an excavation with a footprint that is larger than three acres but less than or equal to fifteen acres and which will be used as a livestock watering pond, aquaculture pond, irrigation pond, or similar bona fide agriculture use. The total amount of cumulative acres of excavations that may occur on contiguous lots is 10 percent of the total acreage of the lot or contiguous lots. The cumulative acres are inclusive of all excavations on-site but exclusive of ditches. These operations shall meet the following requirements:

(A) Location

- i) If the lot is located in the Rural Service Area, it shall have a consistent zoning and Future Land Use Map designation that allows agriculture:
- a) Zoned Agriculture General or Agriculture Estate with an Agriculture Future Land Use Map (FLUM) designation.
 - b) Zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.
 - c) Zoned Planned Development with a Rural Community Mixed Use FLUM designation.
 - d) Zoned Residential Estates-1 or -5 with a Rural Estate Residential FLUM designation.
- ii) If the lot is located in the Urban Service Area, it shall have a consistent zoning and FLUM designation that allows agriculture or a vested bona fide agriculture use.

(B) All aspects of this earthmoving operation shall only occur on uplands.

(C) No excavated material shall be placed in a floodplain.

(D) All excavated material shall be retained on-site; the manner in which the material will be permanently disposed shall be described and, if appropriate, illustrated.

(E) The depth of the excavation shall not exceed two feet above confining layer; all operations proposing a depth below 12 feet shall comply with the soil boring requirements of this Article.

(F) The minimum setback from top of bank to any lot line, easement, and structure shall be 10 feet.

Section 3-5-464. Operation Standards.

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(a) General Earthmoving Operation Standards.

The following general standards of operation apply to all earthmoving operations:

(1) Hours of Operation

(A) In the Rural Service Area and in the Urban Service Area of the Babcock DRI, an earthmoving operation located within two miles of a dwelling unit in existence at the time of permitting, shall only conduct operations between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday, unless otherwise approved by the Earthmoving Administrator. If there is no dwelling unit within two miles, the hours of operation are not restricted.

(B) In the Urban Service Area, but not including the Urban Service Area of the Babcock DRI, an earthmoving operation shall only conduct operations between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday.

(C) For excavations for Agricultural purposes, the only restrictions to hours of operation are for trucks hauling material offsite. Truck traffic hours are restricted to 7:00 a.m. and 6:00 p.m. Monday through Friday and between the hours of 7:00 a.m. and 12:00 p.m. on Saturday.

(2) An earthmoving operation shall not have an adverse impact on the quality or quantity of groundwater or surface water of surrounding or downstream properties.

(3) An earthmoving operation shall not impede or destroy historic flowways. All historic flowways on the earthmoving operation site shall be protected and, if necessary due to degradation, restored.

(4) An earthmoving operation shall not have an adverse impact on the 100-year floodplain.

(5) An earthmoving operation shall not impact off-site drainage.

(6) An earthmoving operation shall not have an adverse impact on environmentally sensitive habitat or any listed species either on-site or off-site.

(7) An earthmoving operation shall protect wetlands and other surface waterbodies.

(A) There shall be a minimum setback of 50 feet, or as approved by the state permit, vegetated with native species, from any activity associated with an earthmoving operation to:

i) Any on-site wetland, unless mitigation for its destruction is approved, and any on-site waterbody that is not integral to the earthmoving operation.

ii) Any off-site wetlands or waterbodies.

(B) No activity other than the removal of exotic invasive species shall take place within this setback. Depending on the duration and intensity of the activity, plantings of native vegetation may be required within the buffer.

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- (C) Sediment barriers, fencing, and signage, as necessary depending on the activity, shall be placed along the outside edge of the 50 foot setback as protection.
- (8) An earthmoving operation shall minimize wind erosion of exposed soils.
- (A) Best Management Practices to reduce wind erosion shall be used.
- (B) All areas of one acre or greater that will result in exposure of denuded soil during the months of November through March shall employ dust and other airborne debris control procedures.
- (C) All areas of one acre or greater, except roads and other surfaces designed for vehicular circulation, which will be subject to erosion for a period longer than twelve months prior to the establishment of finished grade, agricultural crops, or permanent perennial vegetative cover shall be stabilized 30 days after creation.
- (D) Unpaved roads and other surfaces designed for vehicular circulation shall be treated during dry periods to reduce dust and other airborne debris emissions.
- (E) Stockpiles shall not be higher than 50 feet and shall be treated as necessary to reduce dust and other airborne debris emissions.
- (9) An earthmoving operation shall control water erosion and the effects of water erosion.
- (A) Best Management Practices to reduce water erosion and the effects of water erosion shall be used.
- (B) All slopes shall be stabilized. Stabilization may be done with a perennial grass cover and with native plants appropriate to the conditions of the site. Grass and native plant cover shall be required to extend down to the seasonal high groundwater line only.
- i) Stabilization of excavation or fill operations is required to be completed when the final shaping of the slopes is done.
- ii) Stabilization of stockpiles is required if the stockpile will be in place for longer than six months.
- iii) Stabilization of other slopes is required upon completion of the project.
- (C) All development sites shall be bordered by sediment barriers in order to filter any water leaving the site.
- (D) The toe of all exposed slopes not interior to an excavation operation shall be bordered by sediment barriers.
- (E) Barriers shall be placed and maintained such that drainage will not overflow or bypass the barrier. The effectiveness of the filtration shall be maintained by regular clearing of captured sediments or by refurbishment, as necessary. Captured sediments are to be disposed of on upland portions of the development site.

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- (F) Barriers shall remain in place until the slope is leveled or the site is permanently stabilized.
- (10) An earthmoving operation shall protect native topsoils to the greatest extent practicable. Any site which is identified by the Natural Resource Conservation Service as devoid of native topsoils shall be exempt from this requirement. Agriculture (Ag) Excavations and Commercial Excavations are exempt from this requirement.
- (A) The topsoil that occurs on a lot prior to development shall be retained or stockpiled throughout the development of the lot such that it will not be lost during the removal of earth or placement of fill.
- (B) Following fill placement and prior to landscaping, stockpiled topsoils shall be redistributed over the exposed portions of the site.
- (11) An earthmoving operation shall protect drainage easements.
- (A) Existing front and side swales shall not be filled or obstructed in any way, and the adjacent lot's drainage shall be maintained. Easements may be altered with agreement of the easement holder.
- (B) Vehicles and equipment shall not be moved onto any site unless it is over an acceptably constructed and approved crossover.
- (C) Earthmoving operations requiring access across county rights-of-way shall install a temporary pipe in the right-of-way as required by the County Engineer. Temporary pipe must remain in place until permanent pipe is placed, if required, or the operation is completed.
- (12) An earthmoving operation will require permits in accordance with Charlotte County law and applicable Federal and State law for any burning or incineration.
- (13) An earthmoving operation site shall be safely secured against trespass. Depending on the duration of the activity, the intensity of the activity and adjacent uses, a fence or other similar means of securing the site may be required.
- (14) Depending on the duration of the activity, the intensity of the activity and adjacent uses, an earthmoving operation site may be required to be aesthetically enhanced with landscaped screening buffers or landscaped earthen berms.
- (15) Generators and pumps used during an earthmoving operation shall be well muffled.
- (b) Excavation Specific Operation Standards.
- The following additional standards apply to excavation operations.
- (1) The maximum depth of any excavation is two feet above the confining layer.
- (2) The finished slope of any excavation bank shall meet or exceed four horizontal to one vertical. For agricultural excavations this slope is measured from top of bank to a depth no less than two

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feet below the mean water table and for all other excavations this slope is measured from top of bank to a depth no less than five feet below the mean water table.

- (3) In order for stormwater to be discharged into an excavation, a Stormwater Plan must be approved by the County or applicable water management district.
- (4) No solid or liquid waste shall be placed in an excavation except for clean debris in accordance with Subsection 3.5.466(e).
- (5) Dewatering operations shall not cause adverse impacts to drawdown of the groundwater table outside the excavation site and any excavation operations that result in detrimental fluctuations of water levels in adjacent water bodies, wetland areas or water supply wells shall be terminated until such time as a satisfactory plan is developed and implemented to maintain water levels in such areas.
- (6) Blasting, drilling or hammering to fracture a rock surface, and similar activities, shall be limited to the hours between 9 a.m. and 4 p.m. Monday to Friday and 9 a.m. and 12 p.m. Saturday if conducted within one mile of any habitable dwelling unit or institutional use, unless otherwise approved. Trees and other buffering techniques may be required to mitigate noise impacts.
- (7) The permit holder shall provide traffic safety improvements such as signing, striping, barrier rails, turn and/or acceleration lanes with tapers, all meeting American Association of State Highway and Transportation Officials' Standards and which shall comply with the Manual of Uniform Traffic Control Devices, as required by the County Engineer.
- (8) Haul routes:
 - (A) To the greatest extent possible, internal haul routes shall not be located within 250 feet of the lot boundary of the site, except at the lot exit and entry point.
 - (B) An apron is required at the terminus of the internal haul route where it intersects the external haul route. Aprons shall be built to the specifications of the County Engineer.
 - (C) The use of haul routes shall not have undue impact on persons and properties along or in proximity to a haul route. An undue impact would be an increase in airborne debris beyond what is normally experienced without the earthmoving truck traffic, increased noise during the evening and night hours from truck traffic, or trucks that exceed speed limits or are otherwise determined to be operating in contradiction of the law.
 - (D) It shall be the responsibility of the permit holder to mitigate impacts arising from the use of haul routes. Required mitigation measures may include any or all of the following:
 - i) Watering and other dust control measures.
 - ii) Cleanup of material overspills.
 - iii) Maintenance grading of unpaved roads, shoulder grading and restoration.

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xi) Pavement maintenance, including resurfacing, reconstruction, and patching.

x) Safety improvements such as striping barrier rails, turn and acceleration lanes.

(E) If a privately maintained right-of-way is used to gain access to an operation site, the applicant shall supply an affidavit indicating that they have legal use of that right-of-way for a haul route.

Section 3-5-465. Standard Earthmoving and Construction Permits.

The following activities shall require County review and approval prior to the commencement of any earthmoving activity; review and approval by the Earthmoving Administrator is not required. No earthmoving activity shall occur on-site prior to the approval of the permit. If excavated material is to be removed from the site, the roadway service life reduction fee will be assessed. [For a Development of Regional Impact, the development site shall mean any of the area within the DRI boundary.] Stockpiling is considered an accessory to these earthmoving activities but shall only be allowed for material used on the development site and cease when there is no longer a valid permit for the site.

(a) Standard Earthmoving Permits.

The following activities require a Standard Earthmoving Permit.

(1) Site preparation earthmoving activities for subdivisions, multi-family, commercial, and industrial site development which includes approval of earthmoving activities that occur prior to approval of a construction permit or final plat, such as site grading, stormwater and other utility installation, and road construction. This review process will occur simultaneous with the Site Plan Review process and the approved Standard Earthmoving Permit will be given to the applicant when the project receives Final Site Plan approval. Earthmoving in association with construction of a building on the development site may be otherwise reviewed and approved through the Construction Permit process.

(2) Earthmoving activities associated with the creation of residential ponds. This activity shall meet the following requirements:

(A) The lot shall contain a habitable dwelling unit on land zoned for residential use.

(B) The following design requirements are adhered to:

i) The maximum excavation footprint shall be equal to or less than ten percent of the lot or one acre, whichever is less, inclusive of all excavations on-site.

ii) The depth shall not exceed 12 feet.

iii) There shall be a minimum setback of 25 feet from top of bank to any lot line, easement, and structure.

(3) Earthmoving activities associated with the creation of tracks and trails used by off-road vehicles, motorbikes, bicycles and other similar apparatuses.

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- (4) Earthmoving activities associated with the repair, replacement or expansion of septic tanks and drain fields.
- (5) Raising the elevation of a portion of a lot. This shall contain a habitable dwelling unit, and the maximum height that can be reached through this type of filling is one foot above natural grade.
- (6) Earthmoving activities associated with development of active and passive parks, such as playgrounds, ball courts and fields, trails, and associated parking.
- (7) Stockpiling of dredge spoils. Dredge spoil may be stored on vacant or developed residential, commercial, or industrial lots only if the following requirements are met:
- (A) The storage occurs no longer than one year.
 - (B) The spoil pile is at least 20 feet from any buildings.
 - (C) The spoil pile is stabilized and measures are used to reduce the migration of dust and other airborne debris.
 - (D) There shall be no removal of or harm to native plant or animal species, except grasses, to accommodate the storage. A listed species survey, for flora and fauna, and identification of the FLUCCS category of the proposed spoil site are required to satisfy this requirement.
 - (E) The areas used for stockpiling shall be reclaimed by plantings with native groundcover, shrubs, and trees, or proof provided in the form of an approved Construction Permit that the site will be developed with a legal use after the stockpile has been removed. If the site is not to be developed with a use, the site shall be planted so that at least 20 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the remainder shall be seeded with native grasses or other native plants.

(b) Construction Permits.

The following individual activities will not require a separate application for an earthmoving permit, but will be permitted in accordance with otherwise applicable County regulations: the installation of irrigation pipe, commercial landscaping, slabs, driveways, seawall construction, construction or destruction of pools and buildings including standard building permits, tree removal and such other similar development activities. Activities that are first reviewed through Site Plan Review should have obtained a Standard Earthmoving Permit for much of the site preparation earthmoving associated with that activity, such as the installation of utilities, roads, and stormwater infrastructure.

Section 3-5-466. Specific Earthmoving Permits.

The following categories consist of activities that require review and approval by the Earthmoving Administrator. No earthmoving activity shall occur on-site prior to the approval of a permit.

- (a) Reconfiguration of a Lake (Lake Reconfiguration).

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This is for changing the configuration of an existing lake, increasing the size, or increasing the depth more than would occur with a maintenance dredge. The following requirements apply:

- (1) The maximum amount of excavated material that may be removed from the site is 10 percent or 15,000 cubic yards of the total amount of cubic yards to be excavated.
- (2) There shall be a minimum setback of 50 feet from top of bank to any lot line, easement, and structure.

(b) New Canal or Increasing the Width of a Canal (Canal Excavation).

This is for increasing the top width of an existing canal or dredging a new canal. The following requirements apply:

- (1) The maximum amount of excavated material that may be removed from a new canal site is 10 percent or 15,000 cubic yards of the total amount of cubic yards to be excavated.
- (2) A canal top-of-bank may extend to the limits of the easement, right-of-way, or to adjacent lot lines.

(c) Raising Lot Elevation (RLE).

This is for increasing the elevation of a portion of a lot by more than one foot above natural grade; this includes aggregated height of any previous filling operations. The following requirements apply:

- (1) The lot shall contain a habitable dwelling unit on land zoned for residential use.
- (2) The maximum amount of fill that can be placed on a lot of five acres or less is 130 cubic yards and of greater than five acres is 260 cubic yards.
- (3) Stockpiles shall be located a minimum of 50 feet from any lot line or easement.
- (4) All areas shall be seeded, sodded, or planted with native vegetation or other landscaping immediately after grading is complete.

(d) Stockpiling Fill (Stockpiling).

This is for the purpose of stockpiling excavated material on a lot which is not otherwise permitted for an earthmoving operation or construction operation.

- (1) Stockpiling as a principal use of land shall only occur on a lot zoned IL with a Low Intensity Industrial FLUM designation, zoned IG with a Heavy Industrial FLUM designation, zoned EM with a Mineral Resource Extraction FLUM designation, or zoned AG/AE with an Agriculture FLUM designation.
- (2) A stockpile shall not be located within 50 feet of a lot line or easement, 200 feet of a habitable dwelling unit or institutional use, and 50 feet of an agricultural or industrial structure.
- (3) All areas used for stockpiling shall be reclaimed by plantings with native groundcover, shrubs, and trees, or proof provided in the form of an approved construction permit that the site will be developed with a legal use after the stockpile has been removed; if in agriculture land use a site visit to confirm use for a bona fide agriculture use subsequent to the stockpiling activity will

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suffice. If the site is not to be developed with a use, the site shall be planted so that at least 20 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the remainder shall be seeded with native grasses or other native plants.

(e) Filling of an Excavation (Clean Fill).

This is for the purpose of filling in an excavated area. The following requirements apply:

- (1) Only clean debris as defined in 62-701.200 F.A.C., as may be amended, and clean gravel, sand, rock, and clay may be placed within an excavation.
- (2) Clean debris shall only be placed to within 10 feet of the proposed finished elevation of the site. The remaining 10 feet to the proposed finished elevation shall be filled with soil.
- (3) The type, tonnage and origin of the clean debris shall be reported on a quarterly basis to the Earthmoving Administrator.
- (4) All filled areas shall be reclaimed by plantings with native groundcover, shrubs, and trees, or proof provided in the form of an approved construction permit that the site will be developed with a legal use after the filling has been completed. If the site is not to be developed with a use, the site shall be planted so that at least 20 percent of the area used for the stockpiling activity is covered with native trees and shrubs; the remainder may be seeded with native grasses or other native plants.

(f) Excavation for Agricultural Purposes (Ag Excavation).

This is an excavation with a footprint that is greater than 15 acres and which will be used for surface water storage for a bona fide agriculture use. The following requirements apply:

- (1) The lot shall be located in the Rural Service Area and:
 - (A) Zoned Agriculture General or Agriculture Estate with an Agriculture FLUM designation.
 - (B) Zoned Planned Development with a Rural Community Mixed Use FLUM designation.
- (2) The site shall be approved by or be undergoing approval by a State or Federal agency involved in cost sharing expenses for the earthmoving activity. For example, review by the Southwest Florida Water Management District under the Facilitating Agricultural Resource Management Systems program. An approved application is required from the appropriate agency prior to the County application being approved.
- (3) If excavated material is to be hauled offsite, the roadway service life reduction fee will be assessed.
- (4) The following design requirements shall be adhered to:
 - (A) The maximum excavation footprint and the maximum cumulative acres of all excavations on-site, excluding ditches, is 10 percent of the total acreage of crops to be irrigated.

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(B) There shall be a minimum setback of 25 feet from top of bank to non-residential zoning district, 1,000 feet to any residential zoning district, and 1,000 feet to any habitable dwelling unit or institutional structure unless the occupants and owners, if not the same, of the affected structures consent to a reduced setback.

(g) Excavation for Commercial Purposes (Commercial Excavation).

This is an excavation that will be supplying material for construction sites, such as for roadbeds or building pads. The following requirements apply:

(1) The lot shall be located in the Rural Service Area and zoned Excavation and Mining with a Mineral Resource Extraction FLUM designation.

(2) There shall be a minimum setback of 25 feet from top-of-bank to any non-residential zoning district, 1,000 feet to any residential zoning district, and 1,000 feet to any habitable dwelling unit or institutional structure unless the occupants and owners, if not the same, of the affected structures consent to a reduced setback.

(3) Uses that are considered accessory to a commercial excavation are asphalt and concrete plants. These uses must be requested and identified within the earthmoving application and may only exist for the duration of the earthmoving permit.

(4) Vegetative reclamation of a commercial excavation site requires the following:

(A) At least 40 percent of the littoral zone of the reclaimed shoreline of the excavated area shall be planted with aquatic vegetation. An additional 15 percent of the reclaimed shoreline shall be shaped into a littoral shelf extending no less than 15 feet into the excavated area and designed to have less than 24 to 20 inches of water during normal water level periods. The littoral zone and shelf shall be planted with a mixture of native emergent, floating, and submerged plant species of at least three different species. At installation, the plants shall cover at least 85 percent of the areas designated for planting.

(B) An upland planting area is required along the reclaimed perimeter of the excavation footprint. The upland planting area shall utilize the following standards:

i) Required plant units per 100 feet of the perimeter of the excavated area shall be 3 canopy trees, 1 accent/understory tree and 5 shrubs.

ii) The upland planting area shall be a minimum width of 20 feet.

iii) Canopy trees for use within the buffer include:

Bald Cypress	Taxodium distichum
Gumbo Limbo	Bursera simaruba
Laurel Oak	Quercus laurifolia
Live Oak	Quercus virginiana
Sabal Palm	Sabal palmetto
Sea Grape	Coccoloba uvifera

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Southern Slash Pine *Pinus elliottii* var. *densa*

iv) Understory trees for use within the buffer include:

Florida Privet	<i>Forestiera segregate</i>
Red Cedar	<i>Juniperus virginiana</i>
Silver Buttonwood	<i>Conocarpus erectus</i> var. <i>sericeus</i>
Simpson's Stopper	<i>Myrcianthes fragrans</i>
Stoppers	<i>Eugenia</i> spp. (natives only)
Wax Myrtle	<i>Myrica cerifera</i>
Wild Coffee	<i>Psychotria undata</i>

v) Shrubs for use within the buffer include:

Beautyberry	<i>Callicarpa americana</i>
Eastern Gammagrass	<i>Tripsacum dactyloides</i>
Fakahatchee Grass	<i>Tripsacum dactyloides</i>
Firebush	<i>Hamelia patens</i>
Firecracker Plant	<i>Russelia equisetiformis</i>
Florida Privet	<i>Forestiera segregate</i>
Saw Palmetto	<i>Serenoa repens</i>
Simpson's Stopper	<i>Myrcianthes fragrans</i>
Wax Myrtle	<i>Myrica cerifera</i> and cvs.

vi) In no case shall there be a separation of greater than 50 feet between trees.

vii) Other indigenous species may be approved by the County for use in the upland planting area.

viii) Clustering of vegetation may be allowed on a case-by-case basis.

ix) All planted material shall be Florida #1 grade according to Florida Department of Agriculture and Consumer Services, Grades and Standards; trees shall be minimum three-gallon size; shrubs shall be minimum one (1) gallon size, and minimum height of 18 inches.

Section 3-5-467. Earthmoving Operations not Identified by this Article.

Any operation not identified in this Article shall be reviewed on a case-by-case basis by the Earthmoving Administrator and will be assigned to an appropriate category.

Section 3-5-468. Specific Earthmoving Permit Application Requirements.

(a) Information Required in an Application.

An application for a Specific Earthmoving Permit shall include, at a minimum, the items checked below. The application shall be deemed complete if all of the checked information is included in the application. Other information may be required by the Earthmoving Administrator upon sufficiency

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review of the application. The County will accept the same application information that an applicant submits to a State or Federal agency, or an approved permit, if the applicant chooses to use that information to prove that the operation will meet the standards and requirements of this Article.

Information Required in Application	Lake Reconfiguration	Canal Excavation	RLE	Stockpiling	Clean Fill	Ag Excavation	Commercial Excavation
Completed application form	✓	✓	✓	✓	✓	✓	✓
Monetary payment	✓	✓	✓	✓	✓	✓	✓
Deed or other proof of ownership	✓	✓	✓	✓	✓	✓	✓
Application affidavits	✓	✓	✓	✓	✓	✓	✓
Location Map	✓	✓	✓	✓	✓	✓	✓
Legal description & boundary survey of project site	✓	✓	✓	✓	✓	✓	✓
Haul route affidavit	Required if using privately maintained right-of-way, Section 3.5.464, C., 8., e.						
Project narrative	✓	✓	✓	✓	✓	✓	✓
Variance request	Required if a variance to standards is being requested, Section 3.5.474						
Excavation plans	✓	✓	None	None	None	✓	✓
Site plans	None		✓	✓	✓	None	
Soil boring report	Required if depth is greater than 12 feet, Section 3.5.468D		None	None	None	Required if depth is greater than 12 feet, Section 3.5.468D	
Reclamation plans	✓	✓	✓	✓	✓	✓	✓
Environmental surveys	✓	✓	✓	✓	None	✓	✓
Environmental impact statement	None	None	None	None	None	✓	✓
Hazardous material assessment	✓	✓	None	None	None	✓	✓
Traffic Impact Analysis	✓	✓	None	✓	✓	✓	✓
Stormwater Plan	As required by Section 3.5.464, C3						
Statement regarding blasting and, if necessary, Fire Marshall Blasting Permit	✓	✓	None	None	✓	✓	✓
Statement regarding rock crushing	✓	✓	None	None	✓	✓	✓
Statement regarding cement crushing	None	None	None	None	✓	None	None

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(b) Project Narrative.

A project narrative shall include the following information:

- (1) Description of all activity that will take place on-site.
- (2) Type and amount of material to be moved, removed, or stored.
- (3) Probable schedule.
- (4) Who maintains ownership of the site and operation; who is the responsible party for the operation.
- (5) Proposed legal measures to provide for perpetual maintenance of any common or dedicated open space, easements, dedications and reservations.
- (6) Erosion control measures.
- (7) Noise control measures.
- (8) Description of how the site will be secured.

(c) Excavation Plans.

(1) Excavation plans are for excavation operations and shall include the following information:

- (A) Ownership and boundary lines, including bearings and distances superimposed over an aerial photo. Out-parcels within the site shall be clearly indicated along with access to these outparcels.
- (B) Size, shape, depth and location of the proposed excavation, including recharge trenches and settling ponds.
- (C) Locations of all proposed spoil piles and stockpiles of excavated material.
- (D) Within the site and within one-half mile of the site identify right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns. Provide the distance from the site and the excavation footprint to these features.
- (E) Show access roads into the site. Internal haul routes shall be identified along with roadway specifications, drainage requirements and signage locations and type. Identify maintenance measures.
- (F) If material is to be hauled off-site, identify all possible external haul routes within a one mile radius and whether these routes are publicly or privately maintained. Show clear line of site distances at entranceway from internal haul route to external haul route. Show what improvements are necessary to haul routes.

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- (G) Topographic survey showing existing and proposed grades related to NGVD.
- (H) Proposed slopes during excavation, include a cross-sectional drawings referring to NGVD showing the proposed depth(s) of excavation, slope of the side and depth of water.
- (I) Detailed erosion control methods.
- (2) Excavation plans shall include the following if required by proposed excavation conditions:
- (A) Phases of the excavation.
- (B) Location and preservation plan for all wetlands, waterbodies, and other habitats, including setbacks, exotic species removal, and any re-vegetation requirements.
- (C) Location, preservation and restoration plan for any historic flowways.
- (D) Soil borings locations shown in the soil boring report.
- (E) Proposed method of de-watering and use of settling ponds.
- (F) Location of all staff gauges.
- (G) Location of rock crushing, asphalt plant or concrete plant operations.
- (H) Location and configuration of any vegetative noise buffers or landscape screening buffers and earthen berms.
- (d) Site Plans
- Site plans are for non-excavation operations and shall include, but not be limited to:
- (1) Ownership and boundary lines, including bearings and distances.
- (2) Location of haul routes or access roads.
- (3) Adjoining and internal right-of-ways, easements, and lot ownership; natural physical features such as flowways, 100-year floodplain, wetlands, lakes and critical wildlife habitat; all manmade features such as utility lines, wells, septic systems, storage tanks, drainage ditches, houses, and barns.
- (4) Topographical elevations of the site.
- (5) Proposed elevations, if applicable.
- (6) Location of stockpiles, if applicable.
- (7) Detailed erosion control methods.
- (8) Location and preservation plan for all wetlands, waterbodies, and other habitats, including setbacks, exotic species removal, and any re-vegetation requirements.
- (9) Location and configuration of any vegetative noise buffers or landscape screening buffers and earthen berms.

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(10) Location of cement crushing or other operations proposing to alter clean debris.

(e) Soil Boring Report

Soil borings are required when a proposed excavation depth is greater than 12 feet.

(1) There shall be one boring per 10 acres, there shall be a minimum of two borings per excavation footprint. Locations of the test borings are based upon site specific conditions.

(2) Soil borings shall extend five feet deeper than the proposed depth of the excavation, or to the top of the confining layer.

(3) Copies of results shall be signed and sealed by an engineer or geologist.

(f) Reclamation Plans.

(1) Reclamation plans for RLE and stockpiling operations shall include the following:

(A) A description of the manner in which restructuring and reshaping will be accomplished and a depiction of the re-vegetation of the site. List the types and amounts of each species used for re-vegetation.

(B) A description of how the site will be maintained at least five years after the reclamation is complete.

(C) A depiction of what natural and manmade features will exist when the reclamation is complete. This requirement includes the location of mitigation or preservation areas established for wildlife species, fences, walls, and other structures that will be on the property.2. Reclamation plans for all other operations shall meet the requirements listed in F.1. above and will also require a depiction of at least two typical cross-sections each, with elevations, generally oriented north to south and east to west, showing areas to be filled, back-filled, reconstructed and/or reshaped. Water elevations and final grades shall also be shown.

(2) Reclamation plans shall be designed, signed and sealed by a Florida Registered Landscape Architect.

(g) Environmental Surveys.

(1) All environmental surveys shall have been completed within one year of application submittal.

(2) Environmental surveys include:

(A) FLUCCS map and report of all land covers and forms on the site according to FLUCCS category level 3 at scale of 1 inch equals 200 feet, unless a different scale is approved in writing by the Earthmoving Administrator in advance of application submittal.

(B) A listed species survey performed in accordance with State or Federal survey guidelines.

(C) A tree survey, including identification of all heritage trees.

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(h) Environmental Impact Statement.

An EIS is a written and graphic report that analyzes and illustrates the direct, indirect and cumulative impacts of an earthmoving operation upon vegetation, wildlife, wildlife habitat, endangered or threatened species, air quality, water quality, and other issues concerning the public's health, safety and welfare.

- (1) The EIS shall include all drainage calculations, signed, sealed, and dated by an appropriate registered professional, and supporting documentation demonstrating that the proposed project meets the requirements under Environmental Resource Permit (ERP) rules 62-330.301.

(A) Vegetation and wildlife, particularly:

- i) Impacts on-site and to adjacent natural communities.
- ii) Impacts to, and mitigation proposed for, wildlife species that reside on or utilize the site, particularly those listed by the U.S. Fish and Wildlife Service or Florida Fish and Wildlife Conservation Commission as endangered, threatened, or of special concern.

(B) Air quality, particularly:

- i) Airborne debris from any excavation, blasting, stockpiling, sorting, vehicular circulation, or other activity.
- ii) Any exhaust or other emissions from equipment associated with the excavation.

(C) Noise from any equipment, blasting, stockpiling, sorting, vehicular circulation, or other activity.

(D) Hazardous materials and other potential contaminants, including any naturally occurring elements, particularly radiation, that could become potentially harmful to the public if concentrated by any process associated with the proposed operation, such as dewatering, settling, stockpiling, and sorting.

- (2) The EIS shall include any other information required by the Earthmoving Administrator due to unique circumstances.

(i) Hazardous Materials Assessment.

Assess the site for hazardous materials and other potential contaminants, including any naturally occurring elements, particularly radiation, that could become potentially harmful to the public if concentrated by any process associated with the proposed excavation.

(j) Traffic Impact Analysis.

The methodology for this analysis will be prescribed by the County's Transportation Engineer or County Engineer.

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Section 3-5-469. Performance Assurance for Land Reclamation (PALR).

- (a) The amount of the fee shall be calculated as required in the fee resolution adopted by the Board of County Commissioners.
- (b) This shall be required of Commercial Excavations and may be required for other earthmoving operations in a form acceptable to the County Attorney. The PALR shall remain in effect throughout the duration of the permit term, plus one year.
- (c) It is the permit holder's and lot owner's responsibility to reclaim an earthmoving site prior to the expiration of a permit. Should this action not occur, the County will utilize the PALR to reclaim the site if no other satisfactory solution has been agreed upon with the permit holder or lot owner. If a PALR does not exist and the County must reclaim an earthmoving site, a lien shall be placed on the lot in an amount equal to that expended by the County to reclaim the site.

Section 3-5-470 Roadway Service Life Reduction Fee (RSLR).

- (a) The amount of the fee shall be calculated as required in the fee resolution adopted by the Board of County Commissioners.
- (b) The fee shall be submitted to the County in December of each year that the permit is in effect.
- (c) This shall be required of Excavations that meet the conditions of the resolution. The Roadway Service Life Reduction Fee shall remain in effect throughout the duration of the permit term.

Section 3-5-471. Specific Earthmoving Permit Process and Procedures.

- (a) Pre-Application Meetings.
A pre-application conference is mandatory for new applications and Major Modifications.
- (b) Earthmoving Permit Review Process.
 - (1) Lake Reconfiguration, Canal Excavation, RLE, Stockpiling, and Clean Fill.
 - (A) Applicants shall submit an application. An application shall expire within one year of the date that it was determined to be complete. An extension of one year in total of the expiration date of the application may be requested of the Earthmoving Administrator, provided:
 - i) The extension is requested at least 10 working days prior to the expiration date.
 - ii) The applicant is able to demonstrate that the extension is required because of a delay caused by permitting agencies and not to any fault of the applicant.
 - (B) The Earthmoving Administrator will review the application for completeness within five working days of submittal and will notify the applicant of any deficiencies. If the Earthmoving Administrator deems the application to be incomplete, all review of

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the application shall cease until such time as the application is supplemented by the applicant and deemed complete by the Earthmoving Administrator.

- (C) Once the Earthmoving Administrator has determined that the application is complete, sufficiency review will begin. The application will be forwarded to other Staff for their review.
- (D) Staff shall conduct their review and provide the Earthmoving Administrator a report containing comments and recommendations concerning the content of the application, whether it should be approved or not approved as submitted and specific information needed or permit conditions deemed necessary to comply with the provisions of this Article and other applicable law. Initial staff review shall be completed within 60 working days of the application being deemed complete.
- (E) Upon receipt of the aforementioned reports, the Earthmoving Administrator shall determine whether further information is required from the applicant or a decision of approval or denial can be made. Should it be determined that more information is required, the applicant will be informed and all further review of the application will cease until the information is received.
- (F) Once any requested information is received, the Earthmoving Administrator, and other Staff as appropriate, will conduct further review. Any reviews subsequent to the initial review shall occur within 40 working days of the submittal of new information and the applicant shall then be informed if the information adequately satisfies the issue in question.
- (G) When the Earthmoving Administrator determines that no further information from the applicant is necessary and all Staff reviews have been finalized, the Earthmoving Administrator will prepare a letter to the applicant explaining the decision made, the reasons for the decision, and, if approved, any special conditions on the operation.
- i) In the event the Earthmoving Administrator approves the application:
- a) The applicant shall satisfy any outstanding requirements.
- b) A permit shall be issued. The permit holder and the lot owner, if not the same, shall be held responsible for complying with all regulations and conditions of the permit and the Code of Laws and Ordinances of Charlotte County, Florida.
- c) The permit shall be posted at the site throughout the term of the activity.
- ii) In the event the Earthmoving Administrator does not approve the application the applicant may appeal the decision to a Hearing Examiner.

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- (G) Any amount of time taken to review an application above that time allocated for staff review in this subsection shall be applied to extend the expiration date of the application.

(2) Ag Excavations and Commercial Excavations.

- (A) Applicants shall submit an application. An application shall expire within two years of the date that it was determined to be complete. An extension for one year in total of the expiration date of the application may be requested of the Earthmoving Administrator, provided:

- i) The extension is requested at least 20 working days prior to the expiration date.
- ii) The applicant is able to demonstrate that the extension is required because of a delay caused by permitting agencies and not to any fault of the applicant.

- (B) The Earthmoving Administrator will review the application for completeness within ten working days and notify the applicant of any deficiencies. If the Earthmoving Administrator deems the application to be incomplete, all review of the application shall cease until such time as the application is supplemented by the applicant and deemed complete by the Earthmoving Administrator.

- (C) Once the Earthmoving Administrator has determined that the application is complete, sufficiency review will begin. The application will be forwarded to other staff for their review. Initial staff review shall be completed within 60 working days of when the application is deemed complete unless review of the application by a consultant is necessary. If outside review of the application is required, 120 working days may be allowed to complete the initial review.

- (D) The applicant is responsible for providing the county with all necessary information. The Earthmoving Administrator shall provide the applicant with written notice or notices of insufficiencies with the application when the initial staff review period is complete. The failure of the Earthmoving Administrator to mention insufficiencies shall not affect the county's right to require that the insufficiencies be addressed by the applicant when noticed.

- i) Staff may cease review of the application until such time as an identified insufficiency has been addressed by the applicant.
- ii) If the applicant submits information to address an insufficiency, the County shall inform the applicant within 60 working days if the information is adequate to address the issue in question, unless such information needs to be reviewed by a consultant. If a consultant must review the information, 120 working days will be allowed for the review.

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- (E) When the Earthmoving Administrator determines that the applicant has provided information to address all issues identified during staff review, the Earthmoving Administrator will finalize a Master Report, which shall include findings related to consistency with the Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County, Florida, and will provide an approval or denial of the application.
- i) In the event of an approval, the Earthmoving Administrator may require special conditions to be placed on the operation.
- a) The applicant shall satisfy any outstanding requirements.
- b) A permit shall be issued. The permit holder and the lot owner, if not the same, shall be responsible for complying with all regulations and conditions of the permit and the Code of Laws and Ordinances of Charlotte County, Florida.
- c) The permit shall be posted at the site throughout the term of the excavation.
- ii) In the event of a denial, the applicant may appeal the denial to a Hearing Examiner. The applicant shall indicate the decision to appeal the denial in writing to the Earthmoving Administrator within two months of the date of the Master Report.
- (F) If staff review time exceeds that allocated in this subsection, the total amount exceeded shall be applied to extend the expiration date of the application.

Section 3-5-472. Specific Earthmoving Permit Approvals.

The Earthmoving Administrator shall decide if the application is consistent with the Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County, Florida. The applicant has the burden of establishing that all requirements have been met.

Section 3-5-473. Specific Earthmoving Permit Appeal of a Decision.

An applicant may appeal a decision of the Earthmoving Administrator to a Hearing Examiner.

- (a) If the Hearing Examiner determines that the applicant has not met the burden of proof that the application meets the requirements of the Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County, Florida, the application shall be denied and such determination shall be deemed final. Decisions of the Hearing Examiner may be appealed by filing a Petition for Certiorari in the Circuit Court of the Twentieth Judicial Circuit in and for Charlotte County in accordance with the Florida Rules of Appellate Procedure for the review of quasi-judicial decisions of a local government entity.

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(b) If the Hearing Examiner determines that the application does meet the requirements of the Comprehensive Plan, this Article, and the Code of Laws and Ordinances of Charlotte County, Florida, the application shall be approved and such determination shall be deemed final. In this event:

(1) The applicant shall satisfy any outstanding requirements.

(2) A permit shall be issued. The permit holder and the lot owner, if not the same, shall be responsible for complying with all regulations and conditions of the permit and the Code of Laws and Ordinances of Charlotte County, Florida.

(3) The permit shall be posted at the site throughout the term of the excavation.

Section 3-5-474. Variances to Earthmoving Standards.

Variances to the standards may be requested for proposed operations. The request must be included in the submitted application.

(a) Variance requests for Standard Earthmoving operations, as well as Lake Reconfiguration, Canal Excavation, RLE, Stockpiling and Clean Fill earthmoving operations shall be granted or denied by the Earthmoving Administrator.

(b) Variance requests for Ag Excavations and Commercial Excavations shall be granted or denied by a Hearing Examiner.

(c) As a condition to any requested Earthmoving Variance, the applicant shall establish the following prerequisites to the satisfaction of the Earthmoving Administrator or Hearing Examiner before granting of the Variance:

(1) The variance requested is not contrary to the public interest or otherwise detrimental to the public welfare.

(2) Strict adherence to the provisions of the standards would place an undue burden or hardship upon the operation due to unique conditions of the site and that hardship was not caused intentionally by an action of the applicant.

(3) The granting of a variance would not be injurious to or incompatible with contiguous uses or to the surrounding neighborhood or to the environment and would not allow relaxation of State or Federal regulations.

(4) The hardship or conditions cannot reasonably be corrected or avoided by the applicant, there is no reasonable alternative, and the requested variance is the minimum modification of the standard at issue that will afford relief.

(d) Expenses and other monetary considerations are not a basis for proving undue burden or hardship.

(e) The Earthmoving Administrator or Hearing Examiner may add such conditions as deemed necessary in connection with the granting of any Earthmoving Variance.

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- (f) The specifics of an approved Earthmoving Variance, along with any accompanying conditions, shall be listed on the permit.

Section 3-5-475. Earthmoving Permit Periods of Permit Validity.

- (a) The term of a Standard Earthmoving Permit shall not exceed one year unless otherwise stated on the permit.
- (b) The term of a Specific Earthmoving Permit shall commence upon the approval of the permit by the Earthmoving Administrator and will be valid for the following lengths of time:
- (1) The term of Lake Reconfiguration, Canal Excavation, RLE, Stockpiling and Clean Fill permits shall not exceed five years.
- (2) The term of Ag Excavation and Commercial Excavation permits shall not exceed 10 years.

Section 3-5-476. Earthmoving Permit Modifications to Approved Permits.

- (a) Modifications to an approved permit are approved or denied by the Earthmoving Administrator. In order for any modification to be approved, the operation shall be in compliance with the standards, requirements, and conditions under which the permit was issued and all State and Federal permits shall be valid.
- (1) Modifications to extend the period of permit validity shall comply with the following:
- (A) For a Standard Earthmoving permit as well as a Lake Reconfiguration, Canal Excavation, RLE, Stockpiling or Clean Fill permit, the request to extend the period of permit validity shall be submitted at least 20 working days prior to the permit expiration date. Requests for extension subsequent to this timeframe shall not be accepted. Permit extensions may be requested two times for two years each for a total of four years. Further extensions shall not be permitted.
- (B) For a conforming Ag Excavation or Commercial Excavation, the request to extend the period of permit validity shall be submitted at least 40 working days prior to the permit expiration date. Requests for extension subsequent to this timeframe shall not be accepted. Permit extensions for these permits may be requested in ten year increments.
- (C) Once a permit extension is granted, any new fees adopted by the Board prior to the renewal of the permit shall be complied with.
- (D) The Earthmoving Administrator is not obligated to approve an extension if it is determined that conditions within the vicinity of the earthmoving operation have changed since the initial approval and the continuing operation of the earthmoving operation would be detrimental.

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(b) If a modification application is not approved within one year of the submittal date, it shall be considered void.

(c) A denial of a modification request may be appealed to a Hearing Examiner.

Section 3-5-477. Earthmoving Permit Inspections.

(a) The Earthmoving Administrator, or designee, shall have the right to inspect the lands affected under this Article. This right shall extend to lands already permitted to ensure compliance with this Article and all conditions of the permit, as well as those lands where the applicant has submitted an application for the issuance of a permit under this Article.

(b) Inspections of permitted activities shall be performed at least annually. An inspector shall attempt to give at least 72 hours' advance notice and upon arrival the inspector shall attempt to contact operating personnel. Inspections needed in response to a complaint require no advance notice.

(c) A copy of all required local, State and Federal permits and reports must be available for inspection on site at all times.

(d) A copy of the site plan must be available for inspection on site at all times.

Section 3-5-478. Specific Earthmoving Permit Annual Report.

(a) An annual report shall be submitted to the Earthmoving Administrator for each Specific Earthmoving Permit in the manner as required in the County's reporting form.

(b) The annual report shall be submitted, including any applicable fees, on or before December 31 of each calendar year following the permit issuance date and shall include all activity through October 1 of that calendar year. For permits issued on or after October 1 of any calendar year, the Applicant may submit the first annual report on the second December 31 following the permit issuance and on December 31 of each calendar year thereafter.

(c) Failure to file the required annual report shall be grounds for suspension of the activity authorized by the permit; however, an extension of time for filing may be granted by the Earthmoving Administrator for reasonable cause upon a written request received by the Earthmoving Administrator prior to the date that the report is due.

Section 3-5-479. Earthmoving Permit Monitoring Reports

Copies of all reports required by State or Federal agencies shall also be simultaneously submitted to the Earthmoving Administrator.

Section 3-5-480. Earthmoving Permit Violations

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- (a) Any person with any property interest in an earthmoving site as well as the permittee shall be responsible for any violation of this Article.
- (b) It is unlawful for any person to violate or fail to comply with the provisions of this Article, any provisions adopted by reference herein, and of a permit issued pursuant to this Article. If at any time during the term of a permit, the Earthmoving Administrator finds that the provisions of an Earthmoving Permit, this Article, or other applicable law have been violated, the Earthmoving Administrator may issue a stop work order and, if necessary, initiate a violation of the provisions of this Article before the Code Enforcement Board. The stop work order shall remain in effect until the activity is brought into compliance with the permit.
- (d) The validity of a permit shall terminate if there is evidence that the permit is being used for or the land is being prepared for a use other than what was stated in the application, or otherwise lawfully approved by the County. Such evidence may include submittal of an application for a building permit, a special exception, a rezone, a site plan, or similar item.
- (e) If an earthmoving operation occurs without an approved, required permit, the violator(s) shall be required to pay quadruple the regular fee for the application appropriate for that activity, in addition to any code violation fees. The County reserves the right to deny the application and require the lot owner to restore the lot to its previous condition.

Section 3-5-481. Definitions

Agriculture means the science and art of production of plants and animals useful to humans, including to a variable extent the preparation of these products for human use and their disposal by marketing or otherwise, and includes aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.

Confining layer means the impermeable stratum confining an aquifer.

Cumulative or cumulative impact means the total impact that results from a proposed earthmoving operation when added to the impacts of other past, present, and reasonably foreseeable commercial or residential development activity.

Depth means the vertical distance between existing grade and the bottom of an excavation.

Ditch means a linear trench not exceeding 7 feet in depth as measured from natural grade and 20 feet in width.

Dwelling unit means a structure or portion thereof that is used exclusively for human habitation including living, cooking, and sanitary facilities.

Earthmoving means any and all activities resulting in the repositioning of earth and the transporting and installing of earth.

Engineer means a professional engineer registered and certified to practice in the State of Florida who is retained by the permittee, or an agent of the permittee.

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1 *Excavation means the removal of earth, an all-inclusive term, below the existing grade.*

2 *Excavation footprint means the area that is to be excavated up to top of bank.*

3 *Fee resolution means a resolution passed by the Board of County Commissioners that sets forth fees, bond*
4 *amounts, performance assurance requirements and other amounts payable by an applicant and*
5 *permittee.*

6 *Fill means the manmade installation or deposition of deposits of earth, sand, gravel, shell or other approved*
7 *materials to increase the vertical or horizontal extent of land.*

8 *Filling means the act of placing fill on land.*

9 *Grading means leveling, smoothing, and reshaping the ground surface to a level base or specified slope,*
10 *such as for construction work for a building foundation, the base course for a road, landscape and garden*
11 *improvements, or surface drainage.*

12 *Haul route means paved or unpaved roads within and outside the site that the permit specifies can be utilized*
13 *to transport materials to an on-site or off-site destination. The terminus of the haul route shall be the*
14 *nearest state maintained road.*

15 *Lake means a body of standing water occupying a natural basin or manmade depression in the earth's*
16 *surface. The term does not include stormwater ponds.*

17 *Littoral zone or shelf means the near shore area of a water body where sunlight penetrates all the way to the*
18 *sediment and allows aquatic plants to grow.*

19 *Lot means a designated parcel, tract, or area of land established by plat, subdivision, or as otherwise*
20 *permitted by law, and recorded in the public records of Charlotte County, Florida, to be separately owned,*
21 *used, developed, or built upon. For the purpose of this Article, a lot is created on such date that a deed*
22 *for the lot is lawfully first recorded in the public records of the County or the date that a plat has been*
23 *lawfully recorded in the public records of the County and the lot is a part of the plat.*

24 *Lot owner means a person or persons who own the land that is the subject of the earthmoving activity.*

25 *Maintenance dredging means the excavation of sediments or other materials from presently existing and*
26 *functional channels, ditches, canals, lakes, impoundments or other waterways of artificial construction to*
27 *original design elevations.*

28 *Natural grade shall have two meanings depending on the condition of the lot. Natural grade for a lot*
29 *developed with a structure where fill was required in order to raise the lot elevation is the grade of the lot*
30 *after the construction is complete. Natural grade for all other lots means the elevation of the original or*
31 *undisturbed natural surface of the ground as of 1980.*

32 *PALR means Performance Assurance for Land Reclamation*

33 *Site means the portion of a lot that is used for any activity associated with an earthmoving operation.*

34 *Sediment barrier shall mean a physical barrier through which water readily passes and that functions to trap*
35 *or prevent the passage of sediments suspended within the transmitted water.*

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1 *Topsoil* shall mean those soils classified as the upper part of the soil which are the most favorable material for
2 plant growth, ordinarily rich in organic matter, and are used to top dress roads, lawns, and land affected
3 by mining or development.

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